

IN THE HIGH COURT OF MADHYA PRADESH**AT GWALIOR*****BEFORE*****HON'BLE SMT. JUSTICE SUNITA YADAV****FIRST APPEAL No. 123 of 2002****BETWEEN:-**

1. **MR. PRAKASHVEER SHARMA S/O LATE JHAMMAN
LAL LINE NO 14 BIRLA NAGAR GWALIOR
(MADHYA PRADESH)**
2. **GULAB BAI W/O GOPAL NARAYAN DIED THR. LR
DWARIKA PRASAD SHARMA S/O LATE SHRI GOPAL
NARAYAN SHARMA DWARIKADHEESH MANDIR
MORAR (MADHYA PRADESH)**
3. **BALKISHANDAS S/O SHRI MUNNALAL
SUBSTITUTE BY KAMTA PRASAD SHARMA S/O
SHRI DEO SHARMA MEERA NAGAR MORAR
(MADHYA PRADESH)**
4. **YASHWANT SINGH KUSHWAHA SUBSTITUTE BY
RAMESH SHARMA S/O SHRI SHIVDAS SHARMA,
AGED ABOUT 53 YEARS, SHANTI NIKETAN JAL
VILAS CAMPUS GWALIOR (MADHYA PRADESH)**
5. **SAVANT SINGH S/O SHRI M.S. TOMAR, AGED
ABOUT 58 YEARS, OCCUPATION: SERVICE BEHIND
DWARIKADHEESH MANDIR GANDHI ROAD
(MADHYA PRADESH)**
6. **BHARAT SINGH SIKARWAR S/O SHRI CHANDAN
SINGH, AGED ABOUT 58 YEARS, OCCUPATION:
SERVICE AAMKHO LASHKAR GWALIOR (MADHYA
PRADESH)**
7. **RAJENDRA PRASAD GAUR S/O SHRI NARAYAN
PRASAD, AGED ABOUT 55 YEARS, OCCUPATION:
SERVICE DWARIKADHEESH MANDIR MORAR
(MADHYA PRADESH)**
8. **SURAJ PRASAD PEDE WALE SUBSTITUTED BY
SHRI RAJESH KUMAR S/O SHRI HARPRASAD
MORAR (MADHYA PRADESH)**
9. **KAILASH CHAND SHARMA S/O SHRI GOVIND**

SADAR BAZAR MORAR (MADHYA PRADESH)

10. **HARI SINGH BHADORIYA SUBSTITUTED BY SURENDR SINGH MORAR (MADHYA PRADESH)**
11. **DR. NARSINGH CHAUHAN S/O KANSUKH SINGH, AGED ABOUT 55 YEARS, NEAR DWARIKADHEESH MANDIR MORAR (MADHYA PRADESH)**

.....APPELLANTS

(BY MR. PANKAJ DUBEY AND MR. VIRENDRA SINGH - ADVOCATES)

AND

1. **MURTI SHRI DWARIKADHEESH MAHARAJ VIRAJMAN MANDIR THAKUR DWARIKADHEESHJI MORAR GWALIOR SOCIETY REGISTRATION NO 8985 THROUGH (A) PRESIDENT SITARAM AGARWAL S/O KISHANLAL SUBSTITUED BY PARASHCHAND JANI S/O SHRI MOHANLAL SARRAF SADAR BAZAR MORAR (MADHYA PRADESH)**
2. **SECRETARY RAMJIDAS KHANDELWAL S/O SHRI PANNALAL SUBSTITUED BY GOPAL KRISHNA KHANDELWAL S/O SHRI RAMJIDAS KHANDELWAL 6 HAXER COLONY MORAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY MR. K.N.GUPTA – SENIOR ADVOCATE ASSISTED BY MR. SAMEER KUMAR SHRIVASTAVA - ADVOCATE)

Reserved on : 06.04.2023

Whether approved for reporting : Yes

JUDGMENT

(Passed on 18.04.2023)

Present first appeal has been filed under Section 96 CPC against the judgment and decree dated 15.5.2002 passed by Third Additional District Judge, Gwalior in Civil Suit No. 85A/1994, whereby civil suit filed by the

respondent/plaintiff for declaration and permanent injunction has been decreed.

2. The facts in brief to decide the present appeal are that a civil suit was filed by deity through the Society registered under M.P. Societies Registration Act, 1973 (hereinafter referred to as the society). It is the case of the plaintiff that one temple in the name of Murti Shri Dwarikadheesh Ji Maharaj is situated on Gandhi Road, Morar, Gwalior. The deity is situated in a very big compound and the temple consists of residential portion and shops. As per plaintiff, the temple is being managed by one committee which is registered as Murti Shri Dwarikadheesh Ji Maharaj and which was registered on 24.04.1980. It is pleaded by the plaintiff that the temple was constructed prior to 100 years of filing of suit by Seth Kanhaiyalal Khandelwal. The main temple also consist of statue of various other gods and goddesses. During the life time of Seth Kanhaiyalal, the affairs of the temple were conducted by a committee and thereafter on 29.06.1926, for the first time the office bearer of the committee were elected and thereafter, on 28.10.1930, election took place wherein Shri Laxminarayan was appointed as president and Babu Parmeshwar Dayal Shrivastava was elected as Secretary. It is further submitted that thereafter the affairs of the temple were being looked after by the committee as per the Will of late Kanhaiyalal Khandelwal.

3. It is further pleaded in the plaint that the committee used to look after the property and in furtherance thereof various civil works were also done by the committee in the temple, details of which are mentioned in the plaint. The father in law of defendant no.2 namely Brajnarayan and mother in law namely Bhuri Bai encroached upon the temple, therefore, one civil suit was filed by the committee against Brajnarayan and Bhuri Bai which was registered as Civil Suit No. 646/1949. The said suit was filed by the committee and in the said civil suit it was found that Brajnarayan and Bhuri Bai have no relation with the temple and they have encroached upon the temple and its premises. It is further pleaded that Brajnarayan and Bhuri Bai were declared as encroacher vide judgment and decree dated 30.11.1953. In compliance of said judgment and decree, execution was filed in which Brajnarayan and Bhuri Bai admitted their status to be tenant, however, they requested that they may be kept as Pujari in the temple so that they may earn their livelihood. In execution proceedings, both Brajnarayan and Bhuri Bai submitted affidavit as Ex.P-3 and Ex.P-4 in which they admitted their status and accordingly the execution proceedings were disposed of.

4. The plaintiff further pleaded that looking to the management of the temple, the committee was registered under the Societies Registration Act on 26.04.1980. The defendants by suppressing material facts, executed one

forged and fabricated Trust on 24.07.1981 (hereinafter referred to as the Trust) and got the same registered under Public Trust Act. It is further pleaded by the plaintiff that the creator of Trust was Gulab Bai who herself was not the owner and therefore, was incompetent to create a Trust under Section 5 & 6 of Indian Trust Act. It is further pleaded that since the temple has already been registered under Societies Act, 1973, therefore, the same could not have been again registered under the provisions of M.P. Public Trust Act. It is further pleaded that no notice was served under on the plaintiff society regarding registration of Trust. Therefore, it is clear that the Trust has been fraudulently created. Consequently, the suit was filed by the plaintiff seeking the decree to the effect that the plaintiff committee may be declared to manage the affairs of the temple and the defendant may be restrained from interfering the management of the temple.

5. The defendant No.1 filed written statement and pleaded that the original owner namely Shri Kanhaiyalal executed a Trust by way of a written document dated 11.11.1901 and since then the Trust is looking after the property. It is the case of the defendant that since the temple in question is a public temple and therefore, it is not possible that the society may look after the affairs of the temple property. It is further pleaded in the written statement that Gulab Bai, who is the creator of Trust, is residing in the

temple in the capacity of Trustee and therefore she was having right to execute the Trust deed. The defendant further submitted that since the Trust property has been entrusted to the public Trust, therefore the plaintiff's suit is liable to be dismissed.

6. It is further pleaded by the defendant that since the constitution of the Trust has not been challenged under the relevant provision of M.P. Public Trust Act and therefore, the factum of creation of Trust has attained finality and consequently, the plaintiff society cannot manage the affairs of the temple. Accordingly the defendant no. 1 prayed for dismissal of the suit

7. On the same line, defendants No.2, 3 & 8 filed written statement and accordingly they also prayed for dismissal of the suit.

8. Defendants No.5 & 9 also filed their written statement and accordingly they also prayed for dismissal of the civil suit.

9. Learned trial court on the basis of the pleadings framed the necessary issues.

10. Defendants No. 1, 4, 5, 6, 7, 9, 10 & 11 were declared as ex-parte by the learned trial court.

11. Learned trial court vide impugned judgment and decree dated 15.05.2002 decreed the suit of plaintiff.

12. Against the judgment and decree passed by learned trial court, the instant appeal has been preferred by the defendants.

13. Learned counsel for the appellants/defendants argued that the impugned judgment and decree is factually incorrect and legally untenable. Learned trial Court had decided the suit without taking into consideration the effect of enforcement of the M.P. Public Trust Act, 1951. The learned trial Court as fallen in error in overlooking that the suit property is admittedly a public temple, therefore, it was necessary to make the trust a party to the suit. Neither the said trust nor the Registrar of the trust was made a party though necessary. Since the trust is registered by the Registrar under Section 4 of the M.P. Public Trust Act on 24.7.1981, therefore, under the provision of Section 8 of the Act, suit has to be filed within six months, however, the suit is filed beyond the limitation. This suit is filed by the Society which is barred under Section 8 and 32 of the M.P. Public Trust Act. It is further argued that the respondent/plaintiff has sought relief to declare the public trust as null and void, which is barred under Section 32 of M.P. Public Trust Act. The appellant/defendant trust has been formed in accordance with law and the plaintiff was supposed to avail specific remedy under Section 26 of the M.P. Public Trust Act.

14. Further submission of the learned counsel for the appellants is that

the plaintiff Society claims to be registered on 24.4.1980 vide Ex.P-6. The plaintiff Society has submitted his Bye-laws and Business vide Annexure P-39 but none of the Bye-laws mention about administration of any property. On the contrary, the object is limited to work for the upliftment of Sanatna Dharma. Admittedly, Society has not acquired the property lawfully for which a declaration was sought. It is by virtue of impugned judgment dated 15.5.2002, the administration of property of temple is obtained. Learned trial Court has given a negative inference for not producing the Secretary of the trust as a witness.

15. Learned counsel for the appellants further argued that learned trial Court committed illegality in holding that the suit property was acquired by the society and exemption of Section 36 of M.P. Public Trust Act, 1951 can only be claimed if the property which is sought to be administered is vested with the plaintiff Society. There is no evidence showing that the Society administered the property. In the aforesaid circumstance, to take the benefit of Section 36 of the M.P. Public Trust Act, 1951, the Society has to establish that they have acquired the property which they want to administer. The documents filed by the respondent/plaintiff do not show any particular of the property which is maintained under the Society. Learned trial Court has wrongly held that no mutation has been carried out in the revenue record and municipal records in respect to appellant/trust.

Learned trial Court has wrongly held that the Will dated 28.11.1901 (Ex.P-40) is a registered document, therefore, the plaintiff Society has bonafidely acquired the suit property.

16. Learned counsel for the appellants further argued that learned trial Court has wrongly appreciated the judgment in Civil Suit No. 69/1954 (Ex.P-1) and found that the aforesaid judgment is binding on the present defendants.

17. It is further argued by the learned counsel for the appellants that as per the order of this Court dated 04.3.1991 in M.A. No. 30/1990, learned trial Court has opined that the suit as framed is definitely barred and at the same time, the Court was of the view that plaintiff/respondent shall be entitled to appropriately amend its plaint and change the claim of suit pursuing the remedy contemplated under Section 8 of the Act as the plaintiff Society are definitely persons having interest in the Trust. Because of the finding of the trial Court, they are currently in management of the Trust property. This Court in that miscellaneous appeal allowed the appeal and directed for proper disposal of the suit by learned trial Court. Since the above directions are not followed, present suit is not maintainable. The learned trial Court has wrongly taken the entire property in its own administration and gone beyond jurisdiction.

18. On the other hand, learned counsel for the respondent argued at length and submitted that the judgment and decree passed by learned trial Court is in accordance with the evidence and settled principle of law, therefore, this appeal be dismissed.

19. Heard learned counsel for the rival parties and perused the available record.

20. So far as maintainability of this suit in view of the order passed by this court dated 04.3.1991 in M.A. No. 30/1990 is concerned, the record reveals that against the order passed by this Court in M.A. No. 30/1990, a review petition under Order 47 Rule 1 and Section 151 CPC was filed and this Court by its order dated 15.4.1991 allowed the review petition and set aside the order passed in M.A. No. 30/1990 and, therefore, the arguments of learned counsel for the appellant is not acceptable that on account of order passed in M.A. No. 39/1990, present suit is not maintainable. Otherwise also, the order passed in a Miscellaneous Appeal which is interim in nature is not binding in respect to question of maintainability of any suit.

21. The record further reveals that one civil suit No. 4A/2002 was filed by the present appellant/defendant in respect to this disputed property stating therein that since the Trust is entrusted with the property of the temple, therefore, the trust is having right to manage the property and

further prayer was made in the civil suit that the Society which has been constituted is having no right to manage the affairs of the temple. In that civil suit, the Society filed its written statement and denied the plaint pleadings. In view of the order dated 04.3.1991 in M.A. No. 30/1990, civil suit No. 4A/2002 and 85A/1994 were tried together and the connected civil suit filed by alleged Trust was dismissed on 08.5.2002. In civil suit No. 4A/2002, a declaration was sought by the Trust that they are the owner of the property and the respondent Society is having no right to manage the affairs of the Trust. It was also prayed that the Society be restrained from interfering in the affairs of the Temple by the Trust. However, civil suit No. 4A/2002 was dismissed vide judgment and decree dated 08.5.2002. While dismissing the civil suit, it has been held by learned trial Court that the trust was not created in accordance with law because the person who entrusted the property to the Trust was not the owner. It has also been held that Gulab Bai, who is the creator of the trust, was not the title holder of the property, therefore, the trust could not have been validly created. In that suit, it was also held that the Society is rightly managing the affairs of the temple. With these findings, the civil suit was dismissed. All these facts have been considered by learned trial Court in the impugned judgment.

22. Challenging the judgment and decree passed in civil suit No. 4A/2002, First Appeal No. 113 of 2002 was filed. The said appeal was

dismissed for want of prosecution on 02.8.2018. Thereafter, for restoration of the first appeal, initially MCC No. 846 of 2022 was filed, however, said MCC was also dismissed for want of compliance of the Court order. Thereafter, a second MCC No. 2074 of 2022 was filed for restoration of F.A. No. 113 of 2002, however, the same has also been withdrawn on 06.12.2022. Therefore, as of now, F.A. No. 113 of 2002, wherein judgment and decree dated 08.5.2002 passed in civil suit No. 4A/2002 has been challenged, is dismissed and therefore, the finding recorded in said suit has attained finality and therefore, in the light of case law of ***Ramprakash vs. Smt. Charan Kaur: AIR 1997 SC 3760***, those findings in civil suit No. 4A/2002 shall operate as res-judicata. Therefore, learned trial Court has rightly held that the trust was not created in accordance with law because the person (Gulab Bai) who entrusted the property to the Trust was not the owner. Thus, the learned trial court has not erred decreeing the suit in favour of the respondent/plaintiff.

23. Now the question is whether the provision of M.P. Public Trust Act are applicable in the present case or not? In present case, the Society has been formed on 26.4.1980 whereas the Trust is said to have been created on 23.7.1981 and therefore, the Society has been constituted prior in time. The provision of Section 36 of the M.P. Public Trust Act provides as below :-

“36. Exemption. - [(1) Nothing contained in this Act shall apply to,-

x x x

(b) a public trust administered under any enactment for the time being in force,”

x x x

24. In view of the above provision, since respondent/plaintiff Society registered under the M.P. Societies Registration Act, 1973, which has been formed on 26.4.1980, is looking after the affairs of the temple, it will be deemed to be a Trust and when such body is registered under the Society Registration Act, then the provision of M.P. Public Trust Act will not apply.

25. In the case of *Shankar Singh and Ors. vs. Sanstha Sona Bai and Anr.; 1976 JLJ 465*, Division Bench of this Court held that when the Trust is being governed by the body constituted under the Societies Registration Act, then the provision of M.P. Public Trust Act will not be applicable and bar of Section 32 of the M.P. Public Trust Act will not hit the suit of the Society.

26. Same principles have been followed in the case of *Shri Nabhi Nandnan Digambar Jain vs. Ramesh Chandra; 1983 JLJ 469, Digambar Jain and Anr. v. Shri Narendra Kumar Bukharia; 1991 JLJ 93 (6)*.

27. In the case of *Juleous Prasad vs. State of M.P.; 2010 (1) MPJR 40*, it has been held that when a Society registered under the provisions of Societies Registration Act, the body would be a public Trust and therefore, it will have exemption under Section 36 (1-b) of M.P. Public Trust Act.

28. Same principle has been followed in the case of *Murti Govind Maharaj vs. Harishankar; 1991 (2) MPWN 64*. Consequently, the learned trial Court has duly considered the above law and rightly held that instant suit is maintainable.

29. Learned counsel for the appellant/defendant has argued that the Society being not constituted as per law, learned trial Court has wrongly passed decree in favour of the respondent/plaintiff, however, constitution of Society has not been challenged by the defendant/appellant and therefore, without challenging the constitution of society, the argument of learned counsel for the appellant/defendant is not acceptable in respect to relief granted to the plaintiff/respondent. Learned trial Court on the basis of oral and documentary evidence Ex.P-48, P-51, P-52 and P-53 rightly held that the affairs of the temple were looked after by the Society.

30. The Trust in question is said to be created by one Gulab Bai, however, there is no evidence available on record that by virtue of which document Gulab Bai was having right to create the trust of the property. Gulab Bai claimed her title from Bhuri Bai and Brijnarayan, who have been declared as encroacher in the judgment and decree Ex.P-1 and the said judgment and decree was passed in a civil suit filed by the temple against Brijnarayan and Bhuri Bai, therefore, Gulab Bai, who claimed her title from Bhuri Bai and Brijnarayan is having no right to create Trust. In

the present case, there is instrument available on record by which the owner of property created a Trust by a non-testamentary instrument, therefore, in view of all these facts, when Gulab Bai was not the owner of the property and she did not have any right to create Trust without giving the property to the Trust before its registration as a public trust, learned trial Court has rightly held that the very foundation of the public trust is vitiated.

31. In the cases of *Secretary of State vs. Mask and Company; AIR 1940 PC 105* and *Dhula Bai vs. State of M.P.; AIR 1969 SC 78*, it has been held that the Civil Court can always see that before passing of the order, the provisions of particular Act have been complied or not. Therefore, the argument of learned counsel for the appellant is not sustainable that the impugned judgment is illegal as learned trial Court has exercised the powers beyond its jurisdiction.

32. Learned counsel for the appellant also argued that the Trust is not the party in the instant civil suit, therefore, the suit is not maintainable, however, the record reveals that the civil suit is filed against the defendants, who have tried to interfere in the management of the Committee, therefore, the aforesaid argument is not maintainable. Even otherwise, the suit filed by the Trust has already been dismissed, therefore, learned trial Court has not committed any error in decreeing the suit.

33. In view of the above discussion, this court does not find any illegality or perversity in the impugned judgment and decree.

34. Consequently, present first appeal being devoid of merits is hereby dismissed.

(SUNITA YADAV)
JUDGE

AKS